No. 12029

In the United States Court of Appeals for the Ninth Circuit

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

SALLY KAYE, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

APPELLANT'S BRIEF

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STATEMENT OF JURISDICTION

The Housing Expediter appeals from a final judgment of the United States District Court for the Southern District of California, Central Division, entered on April 20, 1948, dismissing an action brought pursuant to Section 205 (a) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. App., Sec. 925 (a)) for violations of the Rent Regulation for Housing (10 F. R. 13528) and Section 206 of the Housing and Rent Act of 1947 for violations of the Rent Regulation issued thereunder (12 F. R. 4331). Notice of Appeal was filed on May 17, 1948 (R. 43). Jurisdiction of the District Court was invoked under

Section 205 (c) of the Emergency Price Control Act, as amended [1] (R. 2) and Section 206 (b) of The Housing and Rent Act of 1947 [2] (R. 6). Jurisdiction of this Court is invoked under Section 128 of the Judicial Code (28 U. S. C. 225).

STATEMENT OF THE CASE

The appeal presents the substantial question whether under the Emergency Price Control Act, as amended, a District Court is empowered to consider the validity of a rent-reduction order requiring refund of overcharges by a landlord to a tenant, on the ground that it is invalid on its face.

A further question is whether the mailing of a registration statement by a landlord constitutes the "filing" of such document with the Area rent office within the meaning of Section 7 (a) of the Rent Regulation for Housing (p. 25, *infra*).

The essential facts in the case are the following:

The defendant below, Mrs. Sally Kaye (appellee and hereinafter called the "defendant"), is the owner of a house located at 469 Poplar Street, Laguna Beach, California, within the Los Angeles Defense-Rental Area (R. 53, 54). These housing accommodations of the defendant were subject to the Emergency Price Control Act, as amended (50 U. S. C. App. Sec. 901, et seq.) and the Rent Regulation for Housing (10 F. R. 13528) issued thereunder (R. 3).

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[1] The Emergency Price Control Act, as amended, is hereinafter referred to as the "Act."

[2] The Housing and Rent Act of 1947 is hereinafter referred to as the "Act of 1947."

The defendant leased the premises through the agency of her son, Peter Kaye, to a tenant, Ann Mailo, for the period from September 23, 1946, to June 1, 1947 (R. 64). In accordance with the lease agreement (R. 29), the tenant paid a monthly rental of $150 (R. 64). The leasing of the house to the tenant, Mailo, was the first renting of her property by the defendant (R. 70). Under the provisions of Section 4 (e) of the Regulation (p. 23, *infra*), the defendant was required to register her accommodations with the area rent office within 30 days after renting them. Section 4 (e) further provided that if the landlord failed to file a proper registration statement within the required 30 days, the rent received was subject to refund to the tenant of any amount in excess of the maximum rent which might later be established under Section 5 (c) (1) of the Regulation.

Section 5 (c) (1) of the Regulation (p. 25, *infra*) provided that the Area Rent Director could order a decrease in the maximum rent registered by the landlord upon a first renting on the ground that this rent was higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on March 1, 1942. Under Section 4 (e) of the Regulation, the decrease could be made retroactive to the commencement of the rental period if the landlord was at fault in failing to file registration of the rental within 30 days after renting. This Section provided also that the landlord would have the duty to refund under the retroactive order only

if the order was issued in a proceeding commenced by the Area Rent Director within three months after the date of filing of a registration statement.

The defendant contended that she mailed the required registration forms reporting the rental of her property to the Santa Ana Office of the Los Angeles Area on about October 17, 1946, which was within 30 days after the renting (R. 73). Nevertheless, the files of the Santa Ana Area Rent Director contained no record as to the filing of such registration with that office (R. 62). In January, 1947 the defendant was informed that the records of the Area Rent Office did not contain a registration of her house (R. 62–63). On February 21, 1947, a registration statement of the renting of defendant's house at $150 per month was filed with the Area Rent Office by the defendant (R. 26, 54). On May 19, 1947, the Area Rent Director issued an order pursuant to Section 5 (c) (1) of the Rent Regulation reducing the maximum rent on defendant's house from $150 to $75 per month, effective from September 23, 1946 (R. 2). This order also directed the defendant to refund to the tenant the overcharges received since September 23, 1946 (R. 27–28). The defendant did not refund the overcharges as required under the order issued by the Area Rent Director (R. 85).

The Housing Expediter (appellant and hereinafter called the "plaintiff") therefore instituted this action on November 13, 1947 (R. 6). The plaintiff sought restitution to the tenant of the overcharges pursuant to Section 205 (a) of the "Act" (p. 22, *infra*) as well as an injunction against violations of the Rent Regula-

tions issued under the Act of 1947 (R. 5, 6). The case was tried without a jury on March 18, 1948 (R. 20).

The Trial Court found that the tenant had paid a rent of $150 per month from September 23, 1946, to May 23, 1947 (R. 22–23), and further found that the Area Rent Director had issued a retroactive order reducing the rent from $150 to $75 per month (R. 23). Nevertheless, the Court held that the rent reduction order was "invalid on its face" with respect to its retroactive application (R. 24). This ruling was apparently based on a finding that within 30 days after defendant's house was first rented, the defendant "duly filed" a registration statement (R. 23). The Court below rendered judgment for the defendant (R. 25), and it is from such judgment that plaintiff appeals (R. 43).

SPECIFICATION OF ERRORS

1. The Court erred in refusing to accept the Rent Reduction Order of the Area Rent Director, dated May 19, 1947, as valid and binding for all purposes and in all respects in the proceedings before it.

2. The Court erred in considering the validity of said Area Rent Director's Order contrary to Section 204 (d) of the Emergency Price Control Act of 1942, as amended.

3. The Court erred in holding that said Rent Reduction Order was invalid on its face.

4. The Court erred in holding that the violations alleged in the Complaint were not established and in refusing to grant judgment in favor of the plaintiff, as prayed for in the Complaint.

ARGUMENT

I

The Court below erred in failing and refusing to accept the rent reduction order of the Area Rent Director as valid and binding for all purposes and in all respects in the proceedings before it

A. Section 204 (d) of the Act divests a District Court of any jurisdiction to consider the validity of a rent order

Plaintiff introduced in evidence as Plaintiff's Exhibit Number 2 (R. 56) an order issued by the Los Angeles Area Rent Director which established the maximum rent for defendant's house as $75.00 per month, effective from September 23, 1946 (R. 27–28). This order further directed the defendant to refund to the tenant any rent in excess of $75.00 per month collected from September 23, 1946 (R. 28). The Court below held that this order was "invalid on its face with respect to its purported retroactive application" and in effect refused to accept the order as binding on the court with respect to the proceedings before it (R. 24). In thus failing to give full effect to the order of the Rent Director, the trial Court was clearly ignoring the mandate of Section 204 (d) of the Act (p. 22, *infra*). That Section provides that no Federal district court shall have jurisdiction to consider the validity of any order or of any provisions of an order issued under the Act. It is explicitly stated in Section 204 (d) that "The Emergency Court of Appeals * * * shall have exclusive jurisdiction to determine the validity of any regulation or order issued" under the Act, and of any provision of any such regulation or order.

That a District Court may not question the validity of a rent order was conclusively enunciated by the Supreme Court in *Woods* v. *Stone,* 68 S. Ct. 624. There, as in the case at bar, an order had been issued by an Area Rent Director reducing the maximum rental, effective from the commencement of renting, and ordering the refund of overcharges. The Housing Expediter brought suit for statutory damages for the overcharges. As the Supreme Court stated:

> No question is raised, and none could have been raised in this proceeding, as to the validity of the relevant regulations and the refund order, either on the ground of retroactivity *or otherwise,* because any challenge to the validity of either would have to go to the Emergency Court of Appeals (68 S. Ct. at p. 625). [Italics supplied.]

The Supreme Court further remarked in that case:

> As we have pointed out, the *validity* of the regulation *and order* are conclusive upon us here (at p. 627). [Italics supplied.]

This Court, in *Fleming* v. *Dashiel,* 161 F. 2d 612 (C. C. A. 9th), has likewise declared that a District Court is without authority under the Act to inquire into the validity of an order issued in the administration of the Act. In holding that a District Court was without authority to inquire into the circumstances of the making of a price fixing order, this Court stated:

> It is equally clear that where an order upon its face is clearly applicable, any failure by the district court to enforce it is in legal effect the equivalent of declaring the order invalid.

> This the District Court had no power to do (footnote 2, 161 F. 2d at p. 613).

(See also, *Bowles* v. *Wheeler,* 152 F. 2d 34 (C. C. A. 9th).)

In *Woods* v. *Bobbitt,* 165 F. 2d 673, 675 (C. C. A. 4th), the District Court held that an order of a Rent Director reducing rent was void since no affidavit of mailing the order in question was made or placed in the files of the Rent Director's office, as required by the Rent Procedural Regulation No. 3. The lower Court ruled that under the circumstances, the District Court had authority to consider the validity of the rent reduction order, and that the exclusive jurisdiction of the Emergency Court of Appeals under Section 204 (d) of the Act did not attach. On appeal, the Fourth Circuit Court reversed, holding that "the United States District Courts have no power to consider the validity of a rent reduction order and this is true even though the claim is made that the person affected has been denied due process or that the order is *void ab initio"* (at p. 675). [Italics supplied.]

In *Bowles* v. *Lake Lucerne Plaza,* 148 F. 2d 967, certiorari denied, 66 S. Ct. 31, the Fifth Circuit Court said:

> But neither this court nor the court below has jurisdiction to consider the validity, the inconsistency, or the arbitrariness of administrative orders. Appellee's remedy was in the Emergency Court. Neither this court nor the court below can set aside or modify the orders of the Rent Director or the orders of the Administrator. We can only construe and enforce them (at p. 970).

In *Elma Realty Co.* v. *Woods,* 169 F. 2d 172 (C. C. A. 1st), the defendant-landlord contended that the Rent Director's orders reducing the maximum rents on apartments rendered uninhabitable by fire, to $1.00 per week, were invalid and void. It was asserted by the defendant that the apartments obviously had no rental value at all. The First Circuit Court, in upholding the ruling of the District Court, which gave effect to the challenged rent orders, stated:

> The appellant's primary contention that the Rent Director had no authority under either the statute or the regulations to issue the orders reducing the rents after the fire to $1.00 per week for each apartment constitutes clearly a direct attack on the validity of the orders themselves. Thus the contention is one to be made in appropriate proceedings in the Emergency Court of Appeals established by § 204 (c) of the Emergency Price Control Act of 1942, since § 204 (d) of the Act not only gives that court, and the Supreme Court upon review of its judgments and orders, "exclusive jurisdiction to determine the validity of any regulation or order issued under section 2" but also provides that except for the Supreme Court's power of review "no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order * * *" (at p. 173).

In *United States* v. *Tantleff,* 155 F. 2d 27 (C. C. A. 2d), certiorari denied, 66 S. Ct. 1374, defendant urged that Revised Maximum Price Regulation No. 169 was void "on its face" because it lacked the prior approval of the Secretary of Agriculture as was required

by Section 3 (e) of the Act. Rejecting this contention as untenable, the court held that this too was a matter reserved to the Emergency Court of Appeals by Section 204 (d) of the Act (see also, *Fleming* v. *Phoenix Chair Co.,* 168 F. 2d 3 (C. C. A. 7th); *Woods* v. *Hills,* 334 U. S. 210).

Thus by the numerous decisions of the Supreme Court and of this and other circuits courts, it is firmly established that, whatever the ground of invalidity asserted, it is not within the province of the District Court to deny validity to an order of an Area Rent Director since that is a matter reserved exclusively for the consideration of the Emergency Court.

B. In any event, the Court below erred in concluding that the rent reduction order was invalid on its face

The trial Court held that the rent reduction order issued by the Area Rent Director on May 19, 1947, was "invalid on its face with respect to its retroactive application" (R. 24). While the plaintiff submits that the District Court was without authority to inquire into the validity of a rent reduction order, the plaintiff contends that in any event, the order issued in this case was not invalid on its face, and the ruling of the trial Court to the contrary was clearly erroneous. There was nothing within the four corners of the order itself (See Plaintiff's Exhibit No. 2, R. 27–28) which in any way suggested that the order might be other than valid. Indeed, it was only by consideration of evidence outside the order that the trial Court was able to arrive at the erroneous conclusion that this order was invalid. On the trial, the lower Court stated

that "the order is absolutely invalid on its fact because it was issued after the expiration of the 30 days, * * *. It is apparent that the registration was made at a certain time and that the Office of Price Administration had 30 days in which to make this order, and this was beyond that period" (R. 98). These facts, as to the time of registration, and that the rent reduction order requiring refund of overcharges was issued more than thirty days after such registration, were obviously not matters ascertainable from the face of the order.

In *Rosensweig* v. *United States,* 144 F. 2d 30 (C. C. A. 9th), the defendants contended that the particular maximum price regulation for violation of which they were convicted, had not been approved by the Secretary of Agriculture as required in Section 3 (e) of the Act. This Court, in affirming the judgments sentencing the defendants, pointed out that there was nothing on the face of the pertinent regulation to indicate the Secretary of Agriculture had not approved it. This Court then proceeded to hold that the contention of the defendants constituted a claim that the Regulation was invalid, which neither this Court nor the District Court had jurisdiction to consider (at p. 30). See also, *Shrier* v. *United States,* 149 F. 2d 606, 608 (C. C. A. 6th). Similarly, in the case at bar there is nothing in the rent reduction order itself which would indicate that it was not issued within the required time after the premises of the defendant were first registered.

The Court below purported to base its holding that the rent reduction order dated May 19, 1947 (R. 27–

28) was invalid on its face on the ground that the order "was expressly conditioned" upon the limitation contained in Section 4 (e) of the Regulation (R. 24). Apparently, the Court was thus saying that the limitation on the issuance of an order of refund contained in Section 4 (e) of the Regulation[3] (*infra*, p. 23) was incorporated by reference in the rent order. However, even if the provisions of Section 4 (e) which authorized the issuance of a refund order only where the first rental was not reported in thirty days after renting had been expressly set forth in the order itself, there would have been nothing added to that document to establish its putative invalidity.

In the light of the foregoing discussion, it is clear that the holding of the Court below that the rent reduction order was invalid on its face was neither warranted by the facts in this case, nor by the authorities cited which indicate that the claim of invalidating circumstances outside an order does not render the order "invalid on its face."

C. The trial Court clearly erred in finding that the defendant "duly filed" a registration statement within thirty days after the defendant's accommodations were first rented

The trial Court found that the defendant had duly filed a registration statement within thirty days after the defendant's accommodations were first rented (R. 23). The Court below also found that the rent

[3] The limitation on the issuance of a refund order contained in Section 4 (e) of the Regulation was the provision that such an order could be issued only in the event of the failure of the landlord to file a proper registration statement within thirty days of renting of the premises.

reduction order indicated that it was made retroactive to September 23, 1946, on the ground that the defendant had failed to file a registration statement within thirty days of the first renting of defendant's accommodations (R. 23). The finding that there was a registration statement "duly filed" within thirty days of the rental is not supported by the evidence in the record. At most, the evidence as to registration only showed that the defendant had mailed the required registration forms to the Area Rent Office (R. 73). The defendant offered no evidence that the registration was received by the Area Rent Office. The evidence introduced by the plaintiff indicated, on the contrary, that no registration was received by the Area Rent Office from the defendant in October 1946 (R. 54, 60).

Since there was no evidence in the record that a registration statement for defendant's house was received by the area rent office in October 1946, it is apparent that the trial Court took the view that under the Rent Regulation a registration was effected by merely depositing the required registration forms in the mail. The requirements for a proper filing of a registration under the Rent Regulation were prescribed in Section 1300.251 of Revised Procedural Regulation No. 3 of the Office of Price Administration, as amended March 1, 1945 (10 F. R. 2431), which provided as follows:

> All notices, reports, registration statements, and other documents which a landlord is required to file, pursuant to the provisions of any maximum rent regulation, shall be filed with

> the appropriate defense-rental area office and shall be deemed filed on the date received by said office unless otherwise provided in such maximum rent regulation or in this regulation: *Provided,* That any such notice, report, registration statement or other document properly addressed to and received by said office shall be deemed filed on the date of the postmark.

Therefore under the above-quoted provisions, there could be no registration "duly filed" unless the registration was actually received by the area rent office.

In *Park Management, Inc.* v. *Porter,* 157 F. 2d 688, the Emergency Court of Appeals considered the question whether mailing constituted the filing of a registration statement under a rent regulation of the Office of Price Administration. The Price Administrator had ruled that the mailing of a registration statement did not meet the requirement of "filing" such registration within the meaning of the rent regulation. In approving of the interpretation of the regulation made by the Price Administrator, the Emergency Court of Appeals said:

> We are of the opinion that the Administrator's interpretation of the meaning of "filing," as used in the Regulation, is not unfair or arbitrary, and should be accepted. It is reasonably necessary to the administration of the Act and the regulations issued thereunder that documents and applications of persons which are required to be filed with the Office of Price Administration be placed in the hands of the proper officials thereof within the time provided. The effective operation of price and

> rent control renders it necessary that all such documents actually be received by the proper officials of the Office of Price Administration rather than be merely deposited in the mails by the persons required to file them. The risk of loss and difficulties of proof are too great to permit mere posting to be sufficient (157 F. 2d at p. 689).

In *McRae* v. *Woods,* 165 F. 2d 790, the Emergency Court of Appeals denied the contention of a landlord that the verification of a complaint satisfied the statutory requirement of Section 204 (e) of the Act that the complaint be filed with that court within thirty days after leave granted. In that case the Court stated:

> It is equally clear that a complaint is not filed, within the meaning of the act, until it is actually delivered to the Clerk for filing in his office. *United States* v. *Lombardo,* 1916, 241 U. S. 73, 36 S. Ct. 508, 60 L. Ed. 897; *Lewis-Hall Iron Works* v. *Blair,* App. D. C., 1928, 23 F. 2d 972; *Stebbins' Estate* v. *Helvering,* App. D. C., 1941, 121 F. 2d 892. Indeed it has been held that the depositing of a paper in the post office is not sufficient to constitute a filing even though it be posted in time for it to reach the filing office in the usual course of the mails within the period allowed. *Poynor* v. *Commissioner of Internal Revenue,* 5 Cir., 1936, 81 F. 2d 521 (165 F. 2d at pp. 790–791).

The Supreme Court, in *United States* v. *Lombardo,* 241 U. S. 73, in holding that a document was not filed

as required by statute by the act of depositing in the Post Office, said:

> The word "file" was not defined by Congress. No definition having been given, the etymology of the word must be considered and ordinary meaning applied. The word "file" is derived from the Latin word *"filum,"* and relates to the ancient practice of placing papers on a thread or wire for safe keeping and ready reference. Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. *Gates* v. *State,* 128 N. Y. Court of Appeals, 221. A paper is filed when it is delivered to the proper official and by him received and filed. Bouvier Law Dictionary; *White* v. *Stark,* 134 California, 178; *Wescott* v. *Eccles,* 3 Utah, 258; *In re Van Varcke,* 94 Fed. Rep. 352; *Mutual Life Ins. Co.* v. *Phiney,* 76 Fed. Rep. 618. Anything short of delivery would leave the filing a disputable fact, and that would not be consistent with the spirit of the act (241 U. S. at pp. 76–77).

Since the finding of the trial Court as to the filing of the registration within thirty days of the renting has been shown to be "clearly erroneous," it is not binding on this Court (Rule 52 (a) of the Federal Rules of Civil Procedure (28 U. S. C. following Sec. 723c)). It also follows that the conclusion of the Court below as to the invalidity of the rent order, which conclusion was expressly based on the erroneous finding as to timely filing of a registration (R. 24), was equally incorrect.

II

The trial Court erred in failing to grant judgment in favor of plaintiff, as prayed for in the complaint

A. The maximum rent for defendant's accommodation during the period involved in this case was $75 per month

The trial Court held that the maximum rent for defendant's accommodation during the period involved in this case was $150 per month (R. 24). Such conclusion was correct only if the retroactive rent reduction order issued May 19, 1947 (R. 27, 28) is to be deemed invalid. As plaintiff has demonstrated, the Court below had no jurisdiction under the Act to treat the order as being other than valid. Accordingly by the terms of the order which the trial Court was obliged to accept as valid for the purposes of these proceedings, the maximum legal rent for the defendant's accommodation was established as $75 per month during the entire term of renting (R. 27–28). The Area Rent Director, in reducing the rent to the maximum rate of $75 per month as of September 23, 1946, was acting pursuant to Section 5 (c) (1) of the Regulation (infra, p. 25) and Section 4 (e) of the Regulation (infra, p. 23) (R. 27). These sections authorized the Rent Director to order the reduction of a registered rent rate retroactive to the date of renting where the landlord had failed to file a registration statement within thirty days of the renting [4] and where the order was issued pursuant to pro-

[4] In *Dean et al.* v. *Woods*, No. 468, Emergency Court of Appeals, decided September 13, 1948 (not yet reported), the Emergency Court upheld the authority of a Rent Director under Section 5 (c) (1) of the Rent Regulation for Housing to issue a retroactive order requiring refund of overcharges where the landlord fails to file a proper registration statement within 30 days of the first renting (p. 3 of slip opinion).

ceedings commenced within three months after a registration was filed. Applying these provisions of the regulation to the facts in this case, it is clear that the action taken by the Rent Director in his order with respect to fixing a maximum rent of $75 per month effective September 23, 1946, was unquestionably proper. As we have seen, the first registration for defendant's house was received by the area rent office on February 21, 1947 (R. 26), although the premises were rented commencing September 23, 1946 (R. 28). Following the receipt of defendant's registration on February 21, 1947, proceedings were commenced by the Area Rent Director on April 2, 1947 (R. 33), which culminated in the issuance on May 19, 1947, of the order establishing a maximum rent for defendant's premises of $75 per month retroactive to September 23, 1946 (R. 27). As it thus appears that the Rent Director complied with the provisions of the Rent Regulation in establishing the maximum rental, the holding of the Court below that the maximum rent was different from that contained in the regularly issued rent order is patently indefensible.

B. Having found that the defendant received a monthly rate which was in excess of the maximum legal rent, the trial Court should have rendered judgment of restitution as prayed for by plaintiff

The trial Court found that the tenant was compelled to pay a monthly rent of $150 for defendant's premises (R. 22). This rental rate involved an overcharge of $75 per month inasmuch as the maximum rent prescribed by the Area Rent Director's order of May 19, 1947 was $75 per month (R. 28). Although the trial Court thus found that the rent payments received by defendant were in excess of the maximum

rental prescribed by the Rent Director's order, that Court rendered judgment for the defendant. The trial Court's decision was erroneous and was induced by its mistaken holding that the order establishing the maximum rent was invalid. Plaintiff in his complaint sought restitution of the overcharges to the tenant in accordance with Section 205 (a) of the Act (infra, p. 22). As was pointed out by the Supreme Court in *Porter* v. *Warner Holding Company,* 328 U. S. 395:

> The inherent equitable jurisdiction which is thus called into play clearly authorizes a court, in its discretion, to decree restitution of excessive charges in order to give effect to the policy of Congress. *Clark* v. *Smith,* 13 Pet. 195, 203. And it is not unreasonable for a court to conclude that such a restitution order is appropriate and necessary to enforce compliance with the Act and to give effect to its purposes. Future compliance may be more definitely assured if one is compelled to restore one's illegal gains; and the statutory policy of preventing inflation is plainly advanced if prices or rents which have been collected in the past are reduced to their legal maximums (at p. 400).

In the *Warner Holding Company* case, *supra,* where the district Court declined under an erroneous view of the law as to its jurisdiction to entertain the propriety of a restitution order, the Supreme Court remanded the case to the district court to exercise its authority with respect to the issue of restitution. In the case at bar the district Court similarly declined to consider whether a restitution order should issue,

and failed to consider plaintiff's prayer for such relief because of its erroneous application of the law to the rent order involved. It is submitted, therefore, that the action taken by the Supreme Court in the *Warner Holding Company* case, *supra,* in remanding should also be pursued by this Court.

In *Creedon* v. *Randolph,* 165 F. 2d 918, the Fifth Circuit reversed a judgment for defendant in a case where the district Court failed to exercise its jurisdiction with respect to restitution even though that Court was satisfied that rent overcharges had been received by the landlord. The appellate Court there said:

> It [restitution] is a remedy which may be had in addition to the others set up in the Act, and an order of restitution may be granted with or without a prohibitory injunction. We find this view of the law abundantly sustained by the majority opinion and the decision of the court in *Porter, Adm'r.* v. *Warner Holding Co.,* 328 U. S. 395, 66 S. Ct. 1086, 1091, 90 L. Ed. 1332.
>
> In that case there was a reversal, and a remand to the district court "So that it may exercise the discretion that belongs to it." We think that a proper disposition of this case (165 F. 2d at p. 920).

The above cited authorities clearly sustain plaintiff's contention that the trial Court was in error in having failed to award restitution under the circumstances in the case at bar wherein it was established that the defendant had received rent payments in excess of the applicable maximum rents for defendant's accommodations.

CONCLUSION

It is respectfully submitted that the judgment below be reversed and the cause remanded with instructions to the lower Court to enter judgment for plaintiff as prayed for in the complaint.

Respectfully submitted.

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APPENDIX

Statutes and Regulations Involved

1. *Emergency Price Control Act of 1942,* as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 50 U. S. C. App., Secs. 901 et seq.).

> Section 204 (d). * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provisions of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provisions of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.
>
> Sec. 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a per-

manent or temporary injunction, restraining order, or other order shall be granted without bond.

2. Housing and Rent Act of 1947, as amended (50 U. S. C. A. App. 1881, et seq.):

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

3. Rent Regulation for Housing (10 F. R. 13528):

SEC. 4. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

(e) *First rent after effective date.*—For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective dates so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the

two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943) the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) (1) may relieve the landlord of the duty to refund. Where a proper registration statement was filed before March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator before September 1, 1945. Where a proper registration statement is filed on or after March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator within three months after the date of filing of such registration statement. The foregoing provisions and any refund thereunder do not affect any civil or criminal lia-

bility provided by the act for failure to file the registration statement required by section 7.

SEC. 5. *Adjustments and other determinations.*—In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required. * * *

(c) *Grounds for decrease of maximum rent.*—The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) *Rent higher than rents generally prevailing.*—The maximum rent for housing accommodations under paragraph (c), (d), (e), (g), or (j) of section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date. * * *

SEC. 7. *Registration*—(a) *Registration statement.*—On or before the date specified in Schedule A of this regulation, or within 30 days after the property is first rented, whichever date is the later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this regulation for such dwelling unit and shall contain such other information as the Administrator shall require. The original shall remain on file with the Administrator and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement, and shall obtain the tenant's signature and the date thereof, on the back of such statement. Within five days after renting

to a new tenant, the landlord shall file a notice on the form provided therefor, on which he shall obtain the tenant's signature, stating that there has been a change in tenancy, that the stamped copy of the registration statement has been exhibited to the new tenant and that the rent for such accommodations is in conformity therewith.

When the maximum rent is changed by order of the Administrator, the landlord shall deliver his stamped copy of the registration statement to the area rent office for appropriate action reflecting such change.

4. Revised Procedural Regulation No. 3 (10 F. R. 2431):

Section 1300.251. All notices, reports, registration statements, and other documents which a landlord is required to file, pursuant to the provisions of any maximum rent regulation, shall be filed with the appropriate defense-rental area office and shall be deemed filed on the date received by said office unless otherwise provided in such maximum rent regulation or in this regulation: *Provided,* that any such notice, report, registration statement or other document properly addressed to and received by said office shall be deemed filed on the date of the postmark.

5. Rule 52 (a). Federal Rules of Civil Procedure (28 U. S. C. A. following Sec. 723c):

(a) *Effect.*—In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not neces-

sary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

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